

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of:)	
)	
Authorizing Permissive Use of the “Next)	MB Docket No. 16-142
Generation” Broadcast Television Standard)	

REPLY COMMENTS OF VERIZON

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I. INTRODUCTION AND SUMMARY.

Consumers should not lose access to the broadcast television programming they enjoy today as broadcasters deploy new ATSC 3.0 technology for tomorrow. To protect both over-the-air and pay TV viewers during the transition to ATSC 3.0, the Commission should require broadcasters to simulcast their programming under the current ATSC 1.0 standard.

Broadcasters themselves have said that local simulcasting is the “core” of the voluntary, market-driven implementation of ATSC 3.0.² Broadcasters in fact proposed, and the Commission tentatively agreed, that broadcasters moving to ATSC 3.0 should have to continue to deliver their service under the ATSC 1.0 standard to ensure that viewers maintain access to programming during the transition.³

In their comments, however, many broadcasters now argue that simulcasting should be optional and that simulcasts need not include the same broadcast programming as ATSC 3.0

¹ The Verizon companies participating in this filing are the regulated, wholly-owned subsidiaries of Verizon Communications Inc.

² See National Association of Broadcasters, *et al.*, Joint Petition for Rulemaking, GN Docket No. 16-142, at 17 (Apr. 26, 2016) (“*Petition*”).

³ See *Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard*, Notice of Proposed Rulemaking, 32 FCC Rcd 1670, ¶ 5 (2017) (“*NPRM*”).

transmissions. These broadcasters are walking back their commitment to provide ATSC 1.0 simulcasts even though existing televisions cannot receive ATSC 3.0 signals and consumers do not know what the ATSC 3.0 viewing experience offers. Simply put, if a broadcast station switched to ATSC 3.0 today but did not provide an ATSC 1.0 simulcast, consumers without new equipment would lose the broadcaster's service. That outcome would be bad for consumers.

The Commission's ATSC 3.0 proposals remain the appropriate path forward to minimize viewer disruption and unnecessary costs while affording broadcasters the flexibility to innovate and offer new services through the ATSC 3.0 standard. The Commission should preserve the viewing public's access to existing television broadcast service by requiring an ATSC 1.0 simulcast of a transitioning broadcast station's ATSC 3.0 signal as the market-driven transition proceeds. If and when consumers accept the benefits of ATSC 3.0, the Commission can decide whether to retire ATSC 1.0 in favor of ATSC 3.0. For the transition period, however, it should seek to mitigate disruption to over-the-air viewers and subscribers to Multichannel Video Programming Distribution (MVPD) services.

The record supports action by the Commission to ensure that the transition to the ATSC 3.0 broadcast standard remains a flexible and voluntary process for consumers, broadcasters, and MVPDs, including a requirement for broadcasters to offer an ATSC 1.0 simulcast in the same format as the pre-transition signal and with the same programming as their ATSC 3.0 signal. These protections will ensure that consumers who do not want to buy new televisions or other equipment continue to receive broadcast programming without degradation.

II. THE COMMISSION SHOULD ADOPT A SIMULCASTING MODEL TO MINIMIZE DISRUPTION TO CONSUMERS.

As proposed in the *Petition* and the *NPRM*, the Commission should require television stations transitioning to ATSC 3.0 to provide a simulcast programming stream in ATSC 1.0.

Consumer interest groups, MVPDs, and other stakeholders all agreed with broadcasters on the scope and purpose of the simulcast:

The core of the voluntary, market-driven implementation of ATSC 3.0 will be local simulcasting. Under this plan, *each television broadcaster* choosing to implement Next Generation TV will arrange to continue to broadcast in the current DTV standard *so that viewers will not be disenfranchised*.⁴

Based on this reasoning, the Commission proposed to authorize television broadcasters to use ATSC 3.0 “while they continue to deliver current-generation digital television (DTV) broadcast service, using the ‘ATSC 1.0’ standard, to their viewers.”⁵

Many broadcasters now claim that this simulcast requirement limits their flexibility in serving the viewing public, assumes unrealistic market conditions, and imposes heavy-handed content regulation.⁶ They contend that such a requirement is unnecessary because they have every incentive to deliver the services that consumers demand and indeed must do so to achieve their own commercial goals.⁷

⁴ *Petition* at 17 (emphasis supplied); see Comments of Nexstar Broadcasting, at 5-6 (May 9, 2017) (“Because the level of ATSC 1.0 viewership likely will remain high until a mandatory transition date, a ‘requirement’ to simulcast the ATSC 1.0 and the ATSC 3.0 transmissions is an obligation readily acceptable to most broadcasters, including Nexstar.”); Comments of AT&T, at 4- 5 (May 9, 2017); Comments of The American Television Alliance (ATVA), at 30-37 (May 9, 2017); Comments of The AWARN Alliance, at 4-5 (May 9, 2017); Comments of Consumers Union, *et al.*, at 6-7 (May 9, 2017); Comments of DISH Network, at 9-11 (May 9, 2017); Comments of ION Media Networks, at 4 (May 9, 2017); Comments of Meredith Corp., at 2-3 (May 9, 2017); Comments of NCTA – The Internet & Television Association, at 9-14 (May 9, 2017); Comments of Verizon, at 11-14 (May 9, 2017).

⁵ *NPRM* ¶ 1.

⁶ See Comments of the National Association of Broadcasters, *et al.* (NAB), at 5-7 (May 9, 2017); Comments of ONE Media, at 6-11 (May 9, 2017); Comments of Pearl TV, at 8-9 (May 9, 2017); Comments of The Public Broadcasting Service (PBS), *et al.*, at 6-7 (May 9, 2017); Comments of American Television Broadcasting Alliance (ATBA), at 2-3 (May 9, 2017); Comments of TEGNA, at 5 (May 9, 2017).

⁷ See, e.g., NAB at 5-7; Nexstar at 7-8; Pearl TV at 8-9; PBS at 6-7; Comments of Raycom Media, at 5-6 (May 9, 2017); Comments of Watch TV, at 3-4 (May 9, 2017).

There is simply no justification for the broadcasters to give short shrift to the real and practical concerns of TV-viewing consumers. The simulcast policy protects consumers. It is not designed to hamstring television stations as they transition to ATSC 3.0 or deny them the opportunity to offer new services in that standard. Indeed it doesn't impede that transition or opportunity; it simply strikes an appropriate balance between allowing broadcasters to innovate and ensuring the transition to ATSC 3.0 is also voluntary and market driven for consumers, MVPDs, and other stakeholders.⁸

Simulcasting in ATSC 1.0 reflects the reality that consumers in the United States today do not have television sets that can display ATSC 3.0 signals, whether obtained over-the-air or on an MVPD network.⁹ Moreover, consumers in the market for video programming have not yet blessed ATSC 3.0 as an experience they want and will pay for. As broadcasters originally acknowledged, their commercial interests and their voluntary decisions to transition to ATSC 3.0 do not require them to deprive consumers of their current TV viewing experience or force consumers and MVPDs to invest the billions of dollars necessary to obtain the equipment for distributing and watching video programming in ATSC 3.0.¹⁰

Broadcasters now counter that the simulcast need not replicate the ATSC 3.0 signal.¹¹ They say that the ATSC 1.0 transmission cannot technically deliver the enhanced video options that may be available through ATSC 3.0. But broadcasters can ensure that consumers have access to the same must-have content and local news services that they would receive if the

⁸ See, e.g., ION Media, at 2.

⁹ See, e.g., *id.* at 2; Comments of ITTA – The Voice of America's Broadband Providers (ITTA), at 3-4 (May 9, 2017); NCTA at 3-9; Comments of WTA – Advocates for Rural Broadband (WTA), at 3-6 (May 9, 2017).

¹⁰ See, e.g., ATVA at 6-13; ITTA at 3-4; WTA at 6; Verizon at 4-7.

¹¹ See ONE Media at 8-9.

station had not voluntarily decided to transition.¹² By imposing the simulcast requirement, the Commission can achieve its goal of minimizing disruption to consumers – whether they watch TV over-the-air or on an MVPD’s network – while still giving broadcasters the flexibility to offer the enhancements available with ATSC 3.0 and any other service that broadcasters decide to make available with their 6 MHz of assigned spectrum.

Broadcasters that are unable to simulcast should nevertheless protect pay TV viewers from losing broadcast programming during the transition by delivering an ATSC 1.0 signal to MVPDs via fiber. Some broadcasters note that market conditions may not offer a suitable host station, and low power stations or non-commercial stations may simply decide to flash cut to ATSC 3.0 to save costs.¹³ But those stations should still seek to minimize harm to consumers. Offering a DTV-quality fiber feed would ensure continued carriage on MVPD networks during the transition, allowing consumers to view the broadcast programming they presently receive.¹⁴ The simulcast requirement will not prevent any station from introducing ATSC 3.0, but it will ensure flexibility for consumers and other stakeholders during the transition.

As many commenters note, the simulcast model will not provide an effective alternative for consumers and MVPDs during the transition unless broadcast stations carry the same programming that they do on the ATSC 3.0 transmission in the same format (*e.g.*, high definition) and at the same bitrate as their current DTV transmission.¹⁵ These programming and picture quality requirements protect choices for consumers, rather than unreasonably burdening

¹² See NCTA at 10. As Verizon and other MVPDs explained, the Commission should require broadcasters to offer the simulcast ATSC 1.0 signal in a resolution substantially similar to their current, primary DTV programming stream. See Verizon at 12.

¹³ See ATBA at 2-3; Comments of LPTV Spectrum Rights Coalition, at 1-3 (May 9, 2017); ONE Media at 22; Watch TV at 2.

¹⁴ See Verizon at 14.

¹⁵ See AT&T at 5-7; Consumers Union at 7-9; DISH at 10-11; NCTA at 10-11; Verizon at 12.

the choices of broadcast stations as several broadcasters claim.¹⁶ A broadcaster's decision to transition to ATSC 3.0 should not leave consumers worse off than they are today by relegating them to poor picture quality and fewer program options if they are unable or unwilling to spend the money necessary to upgrade their in-home equipment for some as yet unknown benefit. The Commission should require broadcasters to provide the same programming in the same format on their simulcasts to ensure the simulcast model preserves consumers' existing broadcast services during the transition – as broadcasters originally committed.

III. TO MINIMIZE HARM TO CONSUMERS AND MVPDS, THE COMMISSION SHOULD CLARIFY MVPD CARRIAGE OBLIGATIONS RELATED TO STATIONS TRANSITIONING TO ATSC 3.0.

The record demonstrates that, without adequate protections, the ATSC 3.0 transition will *not* be voluntary for MVPDs and their subscribers if the Commission allows broadcasters to compel carriage of ATSC 3.0 through forced bundling with retransmission consent for the ATSC 1.0 simulcast, or if “must-carry” rights adhere to the ATSC 3.0 signal.¹⁷ Many broadcasters urge the Commission not to adopt any rules or policies related to retransmission consent, claiming that ATSC 3.0 signals will not be subject to must-carry obligations and that retransmission consent for the ATSC 1.0 and 3.0 signals will be the subject of arms' length marketplace negotiations.¹⁸ But some broadcasters are asking for must-carry rights to apply to the ATSC 3.0

¹⁶ See NAB at 5-7; ONE Media at 8-10.

¹⁷ See, e.g., AT&T at 16-19; ATVA at 19-23; Comments of the American Cable Assoc. (ACA), at 10-13 (May 9, 2017); Consumers Union at 14-17; ITTA at 6-9; Comments and Initial Regulatory Flexibility Analysis Response of NTCA – The Rural Broadband Assoc. (NTCA), at 3-6 (May 9, 2017); WTA at 7-10; Verizon at 8-11.

¹⁸ See Meredith Corp. at 3-4; NAB at 16-18; Nexstar at 7; ONE Media at 25-27; *cf. Petition* at 18 (“Because broadcasters voluntarily electing to move to the new standard will continue to deliver programming streams to MVPDs in the current standard, or under alternative arrangements such as fiber optic feeds, there should be no new operational burden imposed on MVPDs.”)

signal¹⁹ and demanding carriage of ATSC 3.0 as a condition for retransmission of the DTV signal.²⁰

The Commission’s proposal “makes clear that any use of the new standard *will be completely voluntary* for all participants – broadcasters, distributors, and consumers alike.”²¹

While Verizon supports allowing broadcasters to choose whether to move to ATSC 3.0, MVPDs should also have the flexibility to decide whether to carry ATSC 3.0 signals given the tradeoffs of costly network upgrades, price increases for our subscribers, and decreased capacity for other programming.²² To ensure the transition is truly voluntary, the Commission should clarify signal carriage obligations during the transition, as recommended by many MVPDs.

First, until the Commission adopts a mandatory transition date for ATSC 3.0, the only broadcast station signal subject to must-carry rights and obligations should be the ATSC 1.0 signal.²³

Second, the Commission should require broadcasters to give MVPDs an opportunity to negotiate for carriage of the ATSC 1.0 signal separate and apart from any negotiation for carriage of the ATSC 3.0 signal.²⁴

Third, the Commission should find that it is *per se* bad faith for a broadcaster that is initiating transmissions in ATSC 3.0 to condition carriage of its ATSC 1.0 signal on carriage of its ATSC 3.0 signal (*i.e.*, forced bundling).²⁵

¹⁹ ONE Media at 24-25.

²⁰ See ATVA at 28-29; DISH at 4-5; Verizon at 8.

²¹ NPRM at “Statement of Commissioner Michael O’Rielly” (emphasis supplied).

²² See ATVA at 6-18; Verizon at 3-7.

²³ See DISH at 12; NCTA at 20 (ATSC 1.0 signal should be deemed a station’s “primary video” signal for must-carry); Verizon at 13-14.

²⁴ See ACA at 10; AT&T at 17-18; ATVA at 25-27; Verizon at 10-11.

²⁵ See DISH at 5-6; Consumers Union at 17; WTA at 11-12; Verizon at 11; *see also* ITTA at 9-10 (tying carriage of the ATSC 3.0 signal to any other term or condition in retransmission

Fourth, the Commission should require stations transitioning to ATSC 3.0 to give at least 60 days' notice to MVPDs of any facilities changes and allow up to 120 days before commencement of carriage if the modification results in necessary technical changes to the MVPD's facilities.²⁶ Sixty days' notice was in fact proposed by broadcasters, and remains a fair obligation to minimize disruption to subscribers to MVPD services.²⁷

These requirements do not interfere with broadcasters' transition to ATSC 3.0. They simply ensure that consumers continue to receive broadcast programming during the transition, whether over-the-air or from the MVPD of their choice.

IV. THE COMMISSION SHOULD REQUIRE REASONABLE AND NONDISCRIMINATORY LICENSING FOR USE OF PATENTS IMPLEMENTING ATSC 3.0.

MVPDs recommend that the Commission require reasonable and nondiscriminatory (RAND) licensing of the patents necessary for manufacturers, MVPDs, and other industry participants to deploy ATSC 3.0-capable equipment.²⁸ Broadcasters urge the Commission not to impose any such requirement, claiming ATSC itself requires RAND licensing and therefore any Commission rule is unnecessary.²⁹

While Verizon appreciates the admission by broadcasters that RAND licensing fees are necessary for introduction of ATSC 3.0, it urges the Commission to take the same action it has in

agreement should establish a *prima facie* case under the totality of the circumstances test for violation of good faith negotiation standard); NCTA at 20-21 (Commission should protect MVPDs from forced carriage of ATSC 3.0 signals); NTCA at 7-8 (the Commission should take steps to prevent terms for carriage of ATSC 3.0 in retransmission consent agreements).

²⁶ See ATVA at 37-38; Verizon at 12-13; *cf.* AT&T at 21-23 (120 days' notice during post-incentive auction repack; 90 days' notice thereafter); NCTA at 17-18 (6 months' notice); WTA at 12-13 (90 days' notice). *But see* ONE Media at 24-25 (must-carry stations should not have to give any notice).

²⁷ See *Petition* at 19.

²⁸ See ATVA at 45-49; Verizon at 14-15.

²⁹ See ONE Media at 27-28.

the past and adopt a RAND requirement.³⁰ The Commission proposes to adopt ATSC 3.0 as a standard into its rules. It is therefore appropriate to impose conditions for implementation and use of that standard for all stakeholders and provide an enforcement mechanism for such conditions. As it has for other broadcast standards, the Commission should condition adoption of ATSC 3.0 on RAND licensing of relevant patents.

V. THE COMMISSION SHOULD NOT ADOPT A TUNER MANDATE FOR MOBILE DEVICES.

Almost all parties support the Commission's proposal not to adopt an ATSC 3.0 tuner mandate for television receivers.³¹ The Commission should move forward without adopting such a mandate and reject the American Broadcasting Television Alliance's request to adopt an ATSC 3.0 tuner mandate not only for television sets but also for any mobile device capable of receiving and playing video programming.³²

The Commission currently does not require mobile devices to include a television broadcast channel tuner.³³ And it allows providers of mobile devices to decide what frequencies and features to include in their devices with minimal regulatory requirements related to radiofrequency interference and exposure.³⁴ Indeed, the Commission has fostered technological differentiation among mobile providers as one important facet of wireless competition and innovation, and has repeatedly declined to intervene in technology choices.³⁵

³⁰ See *Advanced Television Systems and their Impact upon the Existing Television Broadcast Service*, 11 FCC Rcd 17771, ¶ 55 (1996) (imposing RAND licensing fees for ATSC 1.0).

³¹ See, e.g., AWARD at 7-8; Comments of CTIA, at 6 (May 9, 2017); Consumers Union at 10; Comments of LG Electronics, at 9 (May 9, 2017).

³² See ATBA at 3-9.

³³ See 47 C.F.R. § 15.117(i)(2).

³⁴ See Comments of T-Mobile USA, at 7-10 (May 9, 2017).

³⁵ See, e.g., *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, Report and Order, 17 FCC Rcd 1022, ¶ 1 (2002) ("The flexible allocation we adopt for the Lower 700 MHz Band will allow service providers to select the technology they wish to use to provide new services that the market may demand."); see also *Service Rules for*

The Commission's approach has successfully stoked fierce competition in the mobile communications industry, and there is no reason to change course to accommodate broadcasters' desire to expand their business model from delivering video to the home to delivering video content within the mobile ecosystem. If broadcasters want to include tuners in mobile devices, they can negotiate with mobile device manufacturers and service providers for that opportunity, consistent with the "voluntary, market-driven" approach that they have recommended for adoption of ATSC 3.0 by consumers and MVPDs.

VI. CONCLUSION.

Adopting the recommendations outlined in Verizon's initial comments and above will allow broadcasters to initiate transmissions in ATSC 3.0 while preserving the voluntary, market-driven approach to the transition for all participants in the video marketplace.

Respectfully submitted,

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Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, Report and Order, 18 FCC Rcd 25162, ¶ 1 (2003) ("Licensees in these bands will have the flexibility to provide any fixed or mobile service that is consistent with the allocations for this spectrum."); *Amendment of the Commission's Rules to Establish New Personal Communications Services*, Third Memorandum Opinion and Order, 9 FCC Rcd 6908, ¶ 66 (1994) (FCC declined to impose technical standards on nascent PCS because "imposition of a rigid technical framework at this time could stifle the introduction of important new technology").